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No. 79-1957

Supreme Court of the United States

October Term, 1979

DAVID E. PISEL and EVELYN PISEL,
Petitioners,

vs.

ITT CONTINENTAL BAKING CO. and
ROBERT BRUBAKER,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

Respondents agree in part and disagree in part with the petitioners' statement of the case, including how this case arrived at the Supreme Court of Ohio and the effect of the action which the Supreme Court took.

This case was tried for several days to a jury and at the conclusion of the petitioners' case, a motion by the respondents for a directed verdict was overruled by the trial court. The respondents presented no evidence, and the jury eventually returned a verdict for the petitioners.

Respondents appealed on sundry issues, including the failure of the trial court to grant their motion for directed verdict. The Ohio Court of Appeals affirmed. Respondents again appealed to the Supreme Court of Ohio and that Court agreed to hear the case on the sole issue of the propriety of respondents' trial court motion. The Supreme Court ruled in favor of respondents and concluded that their motion at the close of petitioners' case was erroneously overruled, since there were no issues that could properly go to the jury. Petitioners' motion for rehearing, on substantially the same grounds as were presented here, was subsequently denied.

The inaccuracy of petitioners' statement of the case, which carried over to the "questions presented" portion of their Petition, is the suggestion that the so-called "two issue rule" has any application to a ruling on a motion for directed verdict.

ARGUMENT

THE WRIT SHOULD BE DENIED SINCE NO CONSTITUTIONAL ISSUE ARISES FROM THE DECISION BY THE OHIO SUPREME COURT REVERSING THE TRIAL COURT'S DENIAL OF RESPONDENTS' MOTION FOR DIRECTED VERDICT OR BY ENTERING FINAL JUDGMENT FOR RESPONDENTS

The jurisdictional requirements set forth for this Court in 28 U.S.C. §1257 are not met under any reasonable interpretation of the instant case. Petitioners' only contention that there was a denial of due process or deprivation of equal protection lies in the claim that the Supreme Court of Ohio neglected to apply the so-called

"two issue rule" in its consideration of the propriety of respondents' motion for a directed verdict at the close of the petitioners' case. As is amply demonstrated in 4 OHIO JURISPRUDENCE 2d, *Appellate Review* §831, set forth at p. 5b of petitioners' Petition, the two issue rule is a "rule of policy designed to simplify the work of trial courts and to limit the range of proceedings on review." Its primary, and only, application lies in appellate review of such questions as the propriety of portions of a trial court's charge, the admission or exclusion of evidence and such elements which affect only one of several issues in dispute. That situation does not exist in the instant case where the only question before the Supreme Court of Ohio was the propriety of respondents' motion for directed verdict on *all* the issues. In that respect, petitioners' charge that the Supreme Court of Ohio "reversed the lower court's judgment on the jury verdict" is inaccurate since in fact what the Supreme Court did was reverse the rulings of the two lower courts on respondents' motion for directed verdict on *all* the issues. Under those circumstances, *no issue* could be said to have been submitted to the jury "error free" as the two-issue rule requires, since the Supreme Court determined that *no issue* should have been submitted to the jury. Rule 50, OHIO RULES OF CIVIL PROCEDURE.

Petitioners have chosen to adopt an incorrect interpretation of not only the stage of the proceedings which the ruling of the Supreme Court of Ohio affected, but also of the law which the Supreme Court of Ohio had to consider in making its ruling. Their claim of constitutional impingement, which has no validity in any respect, is founded upon the faulty assumption that it was the jury's verdict that was under scrutiny by the Supreme Court of Ohio, and upon the further faulty assumption that the two-issue rule is a concept recognizable under the principles of either due process or equal protection.

CONCLUSION

No constitutional issue having been presented in this case, and no other grounds for review existing, respondents respectfully request that the Petition be denied.

Respectfully submitted,

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APPENDIX

28 U.S.C. §1257

§1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

OHIO RULES OF CIVIL PROCEDURE

Rule 50(A)

(A) Motion for directed verdict.

(1) When made. A motion for a directed verdict may be made on the opening statement of the opponent, at the close of the opponent's evidence or at the close of all the evidence.

(2) When not granted. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts.

(3) Grounds. A motion for a directed verdict shall state the specific grounds therefor.

(4) When granted on the evidence. When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

(5) Jury assent unnecessary. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.